United Nations CCPR/C/IRL/Q/4/Add.1

International Covenant on Civil and Political Rights

Distr.: General
5 May 2014

Original: English

Human Rights Committee
111th session
7–25 July 2014
Item 5 of the provisional agenda
Consideration of reports submitted by States parties under article 40 of the Covenant

List of issues in relation to the fourth periodic report of Ireland

Addendum

Replies of Ireland to the list of issues*

[Date received: 27 February 2014]

* The present document is being issued without formal editing.

GE.14-43170

1443170

Please recycle

Constitutional and legal framework within which the Covenant is implemented (art. 2)

1. **Given that the Covenant is not directly applicable in the State party, please provide information on measures taken to ensure that all of the Covenant provisions are fully given effect in its domestic legal order, including any progress achieved in the "tabulation of relevant provisions to clarify the situation", which the State party undertook to implement during the consideration of its third periodic report in 2008**

1. Article 29.3 of the Constitution states that "Ireland accepts the generally recognised principles of international law as its rule of conduct in its relations with other States". These principles include international human rights law insofar as it forms part of customary international law. Ireland has a dualist system under which international agreements to which Ireland becomes a party do not become part of domestic law unless so determined by the Oireachtas (Parliament) through legislation. Ireland's fourth periodic report, submitted on 25 July 2012, outlines the measures adopted to give effect to the Covenant.

2. **Taking note of the withdrawal of the State party's reservations to articles 14 and 19, paragraph 2 of the Covenant, please clarify whether the State party will also review its reservations to article 10, paragraph 2 and article 20, paragraph 1 with a view to withdrawing them. If not, please indicate why, identifying the remaining obstacles**

2. All reservations made by Ireland under international treaties are kept under review, with a view to their withdrawal where possible.

3. In relation to article 10, paragraph 2, as set out in our fourth report and elaborated upon further in this document,[1] significant efforts are made to house remand prisoners in purpose built accommodation. Ireland remains committed to implementation of the principles set down in article 10, paragraph 2 but it is not possible at this stage to withdraw the reservation to article 10, paragraph 2. The position will be kept under review.

4. In relation to article 20, paragraph 1, Ireland has no plans to withdraw the reservation at this time. Please see below for further information with regard to the prohibition of hate speech.[2]

3. **Please provide updated information concerning:**

(a) The merger of the Irish Human Rights Commission and the Equality Authority into a new Irish Human Rights and Equality Commission (IHREC), including details of how the new IHREC will be in compliance with the Principles relating to the status of national institutions (the Paris Principles), in particular with regard to financial autonomy, independent and transparent procedures for the recruitment and election of the Chief Commissioner and the members, and direct accountability to Parliament;

(b) The proposed merger of the Labour Court, Labour Relations Commission, Employee Appeals Tribunal, National Employment Rights Authority and Equality Tribunal into one agency. In particular, please clarify how complaints and appeals in relation to the Equal Status Acts 2000- 2011 will be dealt with by the new agency; and

[1] See below, questions 13 (d) and 15.

[2] See below, question 30.

(c) The measures adopted to ensure the effective transfer of the mandates and responsibilities of the National Consultative Committee on Racism and Interculturalism and the Combat Poverty Agency into new or existing bodies, given their abolishment in 2008 and 2009 respectively. Please also indicate any plans to adopt a successor to the National Action Plan Against Racism 2005–2008

Reply to question 3 (a)

5. The new Irish Human Rights and Equality Commission will be fully compliant with the Paris Principles and the intention is that the IHREC will be recognised (as the Human Rights Commission currently is) by the UN as Ireland's National Human Rights Institution (NHRI).

Appointment of Chief Commissioner and Members of Commission

6. The draft legislation establishing the new Commission provides that members of the Commission, including the Chief Commissioner, will be appointed by the President of Ireland, on the advice of the Government following the passing of a resolution by each House of the Oireachtas.

Selection of Chief Commissioners and Members of Commission

7. In April 2013, an Independent Selection Panel selected 14 persons to serve as Commissioners. They were appointed by the Government as members-designate of the new Commission. No Chief Commissioner has yet been appointed. The persons to be appointed to the Commission in future will be selected by the Public Appointments Service (PAS) following a Paris Principles-compliant selection process to be undertaken by the PAS. The PAS has existed in its different forms since the foundation of the Irish State to ensure integrity and impartiality in the appointment of civil servants and other public servants and is independent in the discharge of its functions. In the future, ordinary Commissioners will be selected by the PAS. To underpin the independence of this selection process, the Government shall accept the persons recommended for appointment, save in exceptional circumstances and for stated and substantial reasons.

8. The new Commission will be able to establish Advisory Committees. Such committees will allow for the Commission to establish and maintain contact and cooperation with relevant agencies and with NGOs and other civil society interests.

9. The Commission has commenced work on a three-year Strategy Statement. The Commission will be directly accountable to the Oireachtas in relation to its Strategy Statement.

10. The proposed legislation also outlines how funding will be made available to the Commission by the Oireachtas and contains a commitment that such funding will be reasonably sufficient to allow the Commission fulfil its mandate. An additional €2 million has been provided in the 2014 allocation to support the recruitment of the additional staff approved and to meet necessary programme costs. There is also a commitment to review the staffing needs of the new organisation when these additional staff members are in place.

11. Each year the Commission will prepare an Annual Report on its activities and this will be laid before each House of the Oireachtas. Again, the Commission will be directly accountable to the Oireachtas in relation to its Annual Report.

Reply to question 3 (b)

12. In July 2011, the Minister for Jobs, Enterprise and Innovation announced proposals for a fundamental reform of the workplace relations system. The overall objectives are to promote harmonious and productive employment relationships and to encourage early

resolution of disputes, the vindication of employees' rights, and minimisation of the costs involved for all parties – employers, employees and Government – in terms of money, time and workplace productivity.

13. To this end, it is proposed to establish a two-tier Workplace Relations structure which will involve two statutorily independent bodies replacing the current five. There will be a new single body of first instance to be called the Workplace Relations Commission (WRC) and a separate appeals body, which will effectively be an expanded Labour Court.

14. A significant amount of work has been completed on the preparation of the Workplace Relations Bill. Enactment of the Bill will necessitate amendments to 22 primary acts, 12 specified parts or sections of acts, and 71 statutory instruments. The Government is committed to the publication and enactment of the legislation at an early stage with a view to having the proposed new Workplace Relations structures in place during 2014.

15. The Minister for Justice and Equality has provided absolute assurances on the public record to persons with potential claims under both employment equality legislation and equal status legislation that they will, on the merger of the Equality Tribunal into the new Workplace Relations Service, continue to be able to pursue formal complaints before the new body and that these complaints will be dealt with as effectively as by the Equality Tribunal. Complainants will be able to have complaints under the Equal Status Acts heard at first instance before an adjudicator of the Workplace Relations Commission with (as of now) the opportunity of appeal to the Circuit Court. There will be no change to rights under the Equal Status Acts as a result of the structural reforms.

Reply to question 3 (c)

16. The National Consultative Committee on Racism and Interculturalism (NCCRI) was established in January 1998 as an independent expert body focussing on the combating of racism and promoting interculturalism. It was considered that a consultative body was necessary, given the population changes which had taken place in the previous decade. The NCCRI and its staff contributed to the preparation and implementation of the National Action Plan Against Racism, which ran from 2005 up to the end of 2008. Government funding to the NCCRI ceased at the end of 2008. Some of the functions of the NCCRI were absorbed into the Office for the Promotion of Migrant Integration in the Department of Justice and Equality which focuses on antiracism as a key aspect of integration, diversity management and broader national social policy. The Office works with all the relevant sectors to further progress the integration and diversity management agenda.

National Action Plan Against Racism 2005-2008

17. Ireland was one of the first states in the EU and, indeed, in the world to develop a National Action Plan Against Racism. The National Action Plan Against Racism 2005-2008 was designed to provide strategic direction towards developing a more intercultural and inclusive society in Ireland and was largely integration driven. Support was provided towards the development of a number of national and local strategies promoting greater integration in our workplaces, in An Garda Síochána (Police), the health service, in our education system, in the arts and sports sectors and within our local authorities.

18. Many of the initiatives which were instigated through the National Action Plan against Racism 2005 – 2008 continue to be developed and progressed through the support and work of the Office for the Promotion of Migrant Integration. For example, an Arts and Culture Strategy and an Intercultural Education Strategy were launched in September 2010. The National Action Plan against Racism 2005-2008 was very ambitious and wide ranging

in its scope. Since 2005, there has been a substantial penetration of anti–racist policies, programmes and activities and awareness raising initiatives. The focus is now on the continued implementation of the sectoral strategies which flowed from the Plan. As such, it is not intended to focus on developing a second National Action Plan against Racism.

4. **Please provide further information on:**

(a) The types of complaints filed with the Garda Síochána Ombudsman Commission (GSOC) and their outcomes during the reporting period, including details of non-fatal offences;

(b) The current backlog of cases before the GSOC and the exact nature of these cases;

(c) What measures the State party is taking to ensure cooperation of the Gardai with the investigations undertaken by the GSOC; and

(d) Cases in which the GSOC referred complaints to the Garda Commissioner for investigation. How does the State party reconcile this practice of investigative referrals with the duty to conduct independent investigations of complaints?

Reply to question 4 (a)

19. The number of complaints received by the Garda Síochána Ombudsman Commission (GSOC) in the years 2008–2012 can be seen in table 1, annex A. The breakdown of the types of allegations made in these complaints can be seen in table 2, annex A.

20. Approximately 31% of the allegations in 2012 resulted in a criminal investigations which were conducted pursuant to section 98 of the Garda Síochána Act, 2005.

21. In 2012, a total of 19 cases concerning matters which were investigated by the Ombudsman Commission came before the courts for determination. These cases involved 17 Gardaí, one Probationer Garda and four civilians. The following decision issued in 12 trials involving 14 accused persons as follows:

- Four Gardaí were acquitted;
- Four Gardaí were convicted of various charges;
- Three civilians were convicted of knowingly providing false and misleading information contrary to section 110 of the Garda Síochána Act 2005;
- The Probation of Offenders Act 1907 was applied against one Probationer Garda in relation to a public order offence; and
- One trial involving two Gardaí did not complete as a witness was unable to complete his evidence.

22. A total of 33 files were referred to the Director of Public Prosecutions (DPP) in 2012, of which 12 related to investigations conducted following the receipt of referrals from the Garda Commissioner in accordance with section 102 of the Garda Síochána Act 2005 ("death or serious harm"). The DPP initiated eight prosecutions relating to six Gardaí and three civilians in that year.

23. Examples of category of complaints to the Garda Síochána Ombudsman Commission can be found in annex B.

Reply to question 4 (b)

24. GSOC makes every effort to ensure that all cases are concluded within a satisfactory timeframe. Inevitably some cases take longer than others to investigate. While there was a backlog of cases awaiting an admissibility decision in the early stages of GSOC's operation, that backlog no longer exists.

Reply to question 4 (c)

25. Section 108 of the 2005 Act provides for protocols on, among other matters, the sharing with each other of information (including evidence of offences) obtained by either the Ombudsman Commission or the Garda Commissioner. Updated agreed protocols between the two bodies were signed by both organisations on 23 September 2013 and are available on the websites of the Ombudsman Commission and An Garda Síochána. The revised protocols cover time limits for the provision of information in investigations and also access to PULSE (the primary IT operational system for An Garda Síochána for managing incidents from its initial capture through to final outcome). The Minister for Justice and Equality has also established a committee chaired by a senior official in the Department, with senior representatives from the Ombudsman Commission and the Garda Síochána, to act as a forum where the operation of the new protocols are kept under review.

Reply to question 4 (d)

26. It is standard international practice for police forces to investigate complaints which do not involve criminal offences and the model of police oversight follows this standard to some extent. GSOC may supervise investigations which are referred to An Garda Síochána for investigation. GSOC, at the request of the complainant, can also review the outcome of those cases in which unsupervised investigations have been carried out by An Garda Síochána. Where allegations involve a criminal offence, these matters are investigated directly by the Ombudsman Commission.

5. Please provide information on how the Government addresses concerns regarding the activities of private businesses based in the State party that may lead to violations of the Covenant outside the territory of the State party

27. The Department of Jobs, Enterprise and Innovation is responsible for issuing licenses for exports of Dual Use items outside the EU, and the export of certain military products both within and outside of the EU, in accordance with EU-wide export control regulations. The Department is also responsible for implementing EU trade related sanctions and embargoes. Ireland fully subscribes to its international obligations in this regard.

28. The security, regional stability and human rights concerns which underpin export controls are of paramount importance to the Department of Jobs, Enterprise and Innovation and the Department takes its responsibilities in this regard very seriously. With all applications for export licences, the licensing process centres on ensuring that the ultimate use of a licensed export conforms to national and international law; that the goods are destined for the country and end-user stated on the licence application and that the stated end-user will use the goods for a legitimate purpose. Prior to issuing any export licence for goods intended for a country where there is civil or military unrest or human rights concerns, the Department of Jobs, Enterprise and Innovation consults with the Department of Foreign Affairs and Trade. It is important that the export of sensitive technology is properly controlled and the licensing procedures take into account Irish foreign policy considerations, the EU Common Position on Military Exports, international sanctions policies, as well as obligations stemming from Ireland's membership of the international export control regimes.

29. Ireland is considering how best to implement the "Guiding Principles on Business and Human Rights: Implementing the United Nations 'Protect, Respect and Remedy' Framework". The Guiding Principles cover a range of issues which span the policy responsibilities of a number of Government Departments and agencies. Consideration is being given as to how best to formulate Ireland's national plan for their implementation, including through learning from other countries that have undertaken similar processes.

Non-discrimination, right to an effective remedy and equal rights of men and women, including political participation (arts. 2, para. 1, 3, 16 and 26)

6. Please provide updated information on:

(a) Steps taken or envisaged to amend article 41.2 of the Constitution in line with the Committee's previous recommendation (CCPR/C/IRL/CO/3, para.10), as well as the recommendation outlined in the second report of the Convention on the Constitution, including a timeframe to hold a referendum;

(b) The General Scheme of the Electoral (Amendment) (Political Funding) Bill 2011 which aims at increasing the representation of women in politics; and

(c) Measures taken to increase the representation of women in decision-making positions, and to meet the 40% target in all State board positions as outlined in the Programme for a National Government 2011 – 2016

Reply to question 6 (a)

30. In formulating its second report, the Convention on the Constitution was tasked to deal with two specific issues in relation to gender equality matters. The first issue was the language on "women in the home" within the Irish Constitution. This language had been examined critically on a number of occasions over the past 20 years, including by the Second Commission on the Status of Women (1992), the Constitution Review Group (1996), the All-Party Oireachtas Committee on the Constitution (2006), and the United Nations Committee on the Elimination of Discrimination Against Women.

31. While the Convention on the Constitution did not offer an alternative text in its Report, a majority of its members favoured changing the clause to make it "gender-neutral" and made the further recommendation to include "other carers in the home" and "to include carers beyond the home". A majority of participants at the Convention also recommended that the State should offer a "reasonable level of support" to ensure that [mothers] "shall not be obliged by economic necessity to engage in labour."

32. The Government accepts the first recommendation of the Report in relation to the need to amend the language in Article 41.2 of the Constitution on the role of women in the home. The Government is mindful that a number of wordings have been proposed previously in this regard and has committed to examine these proposals and other options with a view to finding the most appropriate wording to present in a forthcoming Referendum. Full account will be taken of the comments of the Convention including those in relation to carers.

33. The inclusion of a reference by the Convention to the issue of "carers" is the reason why it is not possible to offer a more specific timeframe for a Referendum to take on board the overarching Recommendation at this time. Extensive consultations will be necessary, including with Government colleagues and their officials, in relation to these new elements and to the appropriate choice of language for incorporation into the Constitution.

34. The Minister for Justice and Equality has established a task force in his Department of Justice and Equality to look at these issues, collaborating with other Departments and the Office of the Attorney General as necessary, with a view to completing the task and

reporting back to Government by 31 October 2014 and to preparing for a constitutional referendum at the earliest opportunity after that.

Reply to question 6 (b)

35. The Electoral (Amendment) (Political Funding) Act 2012 links State funding of political parties to the achievement of a gender balance in candidate selection at general elections to Dáil Éireann (lower house of the Oireachtas). In order to receive full State funding, a qualified political party will have to have at least 30% women candidates and at least 30% men candidates at the next general election. Seven years from the next general election, this will rise to 40%. Half of every payment to a qualified political party is to be made contingent on meeting the new requirements. Parties that do not comply will lose half of their State funding for the lifetime of the Oireachtas.

Reply to question 6 (c)

36. An all-Party conference aimed at raising awareness on women and politics was hosted by the Minister of State in charge of Equality, Ms. Kathleen Lynch T.D., on 20 January 2012. The event attracted over 300 participants and brought about a greater awareness of the issue and the challenges for political parties and the public. The Conference heard from the political and administrative leaders of all the main political Parties, including the Taoiseach (Prime Minister) and Tánaiste (Deputy Prime Minister) and representatives of the opposition. It also heard the experiences of a number of serving politicians and words of experience and guidance from a number of international experts.

37. Ireland is supportive in principle of the proposal for an EU Directive on improving the gender balance on the boards of Stock Exchange listed companies. The Directive, when adopted and transposed into Irish law, should raise significantly the number of women on the boards of Irish listed companies.

38. A working group chaired by Minister of State Kathleen Lynch T.D. in the context of the National Women's Strategy has been specifically addressing the advancement of women in leadership roles, including in politics, management, on boards, and in the diplomatic and judicial systems. Its report, along with recommendations for action, will be presented to Government in the near future.

39. A wide ranging positive action programme has started this year on "women and leadership" which is being supported over a two year period by the European Social Fund PROGRESS initiative.

40. The Programme for Government 2011–2016 aims for all State boards to have at least 40 per cent of each gender. Departments are also required to report annually on the steps that they and their agencies are taking to achieve the 40% target, which currently stands at approximately 34%.

41. The Government recently appointed two new women judges to the Supreme Court, bringing the number of women judges serving on the bench of the Court to three (including the Chief Justice) out of a total complement of nine Justices. Three of the top legal and judicial office holders – Chief Justice, Attorney General, and Chief State Solicitor – are now women.

7. Please inform the Committee of the progress in adopting the Assisted Decision Making (Capacity Bill)

42. The Assisted Decision-Making (Capacity) Bill 2013 was published on 17 July 2013 and provides a series of options to support people who have difficulties in terms of decision-making capacity to exercise autonomy in decision-making to the greatest extent

possible, in line with the principles contained in UN Convention on the Rights of Persons with Disabilities. Consideration of the Bill by the Oireachtas began in December 2013.

Domestic, sexual and gender-based violence (arts. 3, 7, 23, 24 and 26)

8. **Please provide updated information on:**

(a) Steps taken to establish a systematic data collection procedure concerning cases of domestic and sexual violence;

(b) Complaints, prosecutions and sentences in relation to violence against women, including in relation to Traveller women, migrant women, asylum-seeking and refugee women and women with disabilities, during the reporting period; and

(c) Measures taken to ensure that women in dating relationships and unmarried cohabitants have equal access with regard to barring orders against perpetrators of violence, and that non-citizens whose status is linked to that of their partner under the Habitual Residence Condition are able to flee from situations of domestic violence to access the necessary welfare and support services and to obtain separate residence permits

Reply to question 8 (a)

43. Cosc, the National Office for the Prevention of Domestic, Sexual and Gender-based Violence, identified, as part of the work to create the first National Strategy on Domestic, Sexual and Gender-based Violence 2010 - 2014, a number of areas where data collection could be improved in the areas of domestic and sexual violence. Cosc is working with the relevant state agencies and departments in the sector through the data committee established under Action 19 of the strategy to ensure that suitable data systems are in place to collect the appropriate data to inform current and future policies and priorities.

Reply to question 8 (b)

44. In relation to sexual violence, in 2012, 83 rape cases were received by the Central Criminal Court, 488 sexual offences by the Circuit Court, and 2,199 by the District Court. These figures are not disaggregated by age or gender of the victim.

45. Domestic violence is not classified as a separate criminal offence under the law in Ireland. Incidences of domestic violence are recorded by An Garda Síochána under the offence type which occurred, e.g., assault, but the circumstances of the offence are noted in these cases.

46. In 2012, the District Court made 1,165 Barring orders, 520 Interim Barring orders, 2,255 Safety orders, and 3,849 Protection orders in relation to domestic violence. These statistics include any cases involving Traveller women, migrant women, asylum-seeking and refugee women, as well as women with disabilities.

Reply to question 8 (c)

47. The Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010 extended the application of domestic violence orders to civil partners, as defined by the Act.

48. The Civil Law (Miscellaneous Provisions) Act 2011 introduces important amendments to the Domestic Violence Acts 1996 and 2002 to extend the powers of the court to order protection of persons in cases of domestic violence.

49. The 2011 Act amends the Domestic Violence Act 1996 so that:

(i) A parent may now apply for a safety order against the other parent of their child, even where the parents do not live together and may never have lived together. This ensures that the full protection of the law is available where access to a child is an occasion of intimidation or even violence between disputing parents;

(ii) The protections of the Act are available on the same basis to unmarried opposite-sex couples and same-sex couples who have not registered a civil partnership; and

(iii) Couples who are not married or are not in a registered civil partnership are no longer required to have lived together for a particular minimum period of time before one of them can obtain a safety order against the other.[1]

50. The Irish Naturalisation and Immigration Service has published Immigration Guidelines for Victims of Domestic Violence, available online. The guidelines apply to any foreign national with an immigration status that is dependent on another individual (Irish, EU or other citizens) and who is a victim of domestic violence. The guidelines detail the application process and requirements for victims who wish to apply for an independent immigration status in Ireland.

European Protection Order

51. During its Presidency of the Council of the European Union in 2013, Ireland successfully negotiated an agreement with the European Parliament on the European Protection Order, a civil law measure which will apply from January 2015 and ensure that victims of domestic violence and other forms of violence, harassment and intimidation can avail of national protections when they travel to other EU Member States.

9. **Please clarify:**

(a) When the State party will establish a prompt, thorough and independent investigation into the abuse perpetrated in the Magdalene Laundries as recommended by the Irish Human Rights Commission in its follow-up report on State involvement with Magdalene Laundries; and

(b) How the redress scheme proposed by Mr. Justice John Quirke will be monitored by an independent body, and how the appeals process will operate

Reply to question 9 (a)

52. The Report of the Inter-Departmental Committee to establish the facts of State involvement with the Magdalen Laundries – the McAleese Report was published on 5 February 2013. The contents of the report have been fully accepted by the Irish Government as a comprehensive and objective report of the factual position prepared under the supervision of an independent chairperson. On 19 February 2013, on foot of the findings of the report, the Taoiseach made an apology in Dáil Éireann.

53. No factual evidence to support allegations of systematic torture or ill treatment of a criminal nature in these institutions was found. The majority of women did report verbal abuse but not of a nature that would constitute a criminal offence. There is no doubt that the working conditions were harsh and work physically demanding. The laundries were subject to State inspection, in the same way and to the same extent as commercial, non religious operated laundries. The Committee interviewed a number of medical doctors who had

[1] Couples as mentioned in (ii) and (iii) above are defined as those who have lived together "in an intimate and committed relationship" prior to the application for the order. The minimum period of living together for a barring order is an aggregate of six months in the nine months immediately prior to the application.

attended the women in the Magdalen laundries and who had in some cases reviewed earlier records. They did not recall any indication or evidence of physical maltreatment.

54. The facts uncovered by the Committee did not support the allegations that women were systematically detained unlawfully in these institutions or kept for long periods against their will.

55. No individuals claiming to be victims of criminal abuse in Magdalen laundries have made any complaints or requests to the Department of Justice and Equality seeking further inquiries or criminal investigations. The group representing the largest number of women who were in Magdalen laundries, Irish Women Survivors Support Network, have stated that:

56. "We hope that time is not wasted calling for more statutory inquiries or demanding yet more bureaucratic statutory processes. In their advanced years, the women have repeatedly told us they have no wish for conflict or confrontation."

57. While isolated incidents of criminal behaviour cannot be ruled out, in light of facts uncovered by the McAleese Committee and in the absence of any credible evidence of systematic torture or criminal abuse being committed in the Magdalen laundries, the Irish Government does not propose to set up a specific Magdalen inquiry or investigation. It is satisfied that the existing mechanisms for the investigation and, where appropriate, prosecution of criminal offences can address individual complaints of criminal behaviour if any such complaints are made.

Reply to question 9 (b)

58. Following consideration of the Report of Mr Justice John Quirke, the Government decided to provide, on an ex gratia basis, a scheme of payments and benefits for those women who were admitted to and worked in the Magdalen Laundries, St Mary's Training Centre, Stanhope Street, and House of Mercy Training School, Summerhill, Wexford. The Office of the Ombudsman will provide an independent appeals procedure in line with the seventh recommendation of Mr Justice Quirke.

10. Taking note of the information received that the Monitoring Group for the "Ryan Implementation Plan" – adopted pursuant to the report of the Commission to Inquire into Child Abuse – will reportedly conclude its work in 2013, please provide information on the replacement mechanism to ensure the full implementation of the plan, as well as on the number of criminal prosecutions in child abuse cases

59. Following publication of the report of the Commission to inquire into Child Abuse ("Ryan Report"), An Garda Síochána established a dedicated phone line for persons who wished to provide information relating to criminal behaviour connected with what the report revealed. As of 22 October 2013, 181 calls have been received on the Garda helpline. An Garda Síochána carried out investigations and submitted fifteen investigation files to the DPP. The DPP directed no prosecution in the case of fourteen of them. The DPP directed a prosecution in one case and in January 2013 the individual concerned was sentenced to 2 years imprisonment with 18 months suspended on 14 counts of indecent assault. One additional investigation is nearing completion and will be the subject of submissions to the DPP.

60. Work is ongoing in the Department of Children and Youth Affairs to compile the fourth and final monitoring report on the implementation plan for the Ryan Report. The 99 actions in the implementation plan relate to a range of Departments and agencies. It is hoped to complete the report in the first quarter of 2014. The Government has committed to full implementation of all actions contained in the plan and it is expected that the final

report will cover full implementation of all actions in the plan. Accordingly, there will be no requirement for a replacement mechanism in respect of the Ryan Implementation Plan.

61. In relation to the broader issue of ongoing implementation of child protection reforms and improvements on a cross-sectoral basis, consideration will be given, in the context of the fourth and final monitoring report on the Ryan Implementation Plan, to devising a mechanism to replace the Ryan Monitoring Mechanism, to ensure that a focus is kept on child protection issues across Departments and Agencies. This consideration will take place in the context of the drafting of legislation to put elements of the "Children First: National Guidance for the Protection and Welfare of Children" (2011) on a statutory footing.

Derogation (art. 4)

11. Please provide further information on measures taken to ensure that its domestic legal provisions, including article 28.3 of the Constitution, are consistent with article 4 of the Covenant, as recommended by the Committee in its previous concluding observations

62. Article 28.3.3 of the Constitution provides that the two Houses of the Oireachtas may resolve that, in time of war (which includes a time when an armed conflict is taking place in which the State is not a participant), armed conflict or armed rebellion, a state of national emergency exists affecting the vital interests of the State.

63. In accordance with that Article, the Houses of the Oireachtas on 1 September 1976 resolved that "arising out of the armed conflict now taking place in Northern Ireland, a national emergency exists affecting the vital interests of the State." This state of emergency was ended by virtue of resolutions introduced by the Government and passed by both Houses of the Oireachtas on 7 and 16 February 1995. The Secretary General of the United Nations was informed of the termination of the state of emergency, as required under paragraph 3 of Article 4.

64. Ireland does not accept that any actions taken in the context of a national emergency and which derive from Article 28 of the Constitution have been disproportionate to the nature of the threat faced by the State at that time and/or incompatible with the Covenant.

Right to life (arts. 6, 7 and 17)

12. Please provide information on:

(a) How the Protection of Life During Pregnancy Act 2013 is in compliance with articles 6 and 7 of the Covenant and the Committee's previous recommendations;

(b) Concrete measures that are being taken or envisaged to clarify what a "real and substantial risk" to the pregnant women's life means in practice, in order to provide legal and clinical clarity for health providers and certainty for women experiencing potentially life-threatening pregnancies;

(c) Whether the State party intends to introduce measures to broaden access to abortion to guarantee women's rights under the Covenant, including when the pregnancy poses a risk to the health of the pregnant woman, where the pregnancy is the result of a crime, such as rape or incest, cases of fatal foetal abnormalities, or when it is established that the foetus will not survive outside the womb; and

(d) Circumstances in which the Director of Public Prosecutions may authorize prosecutions, and against whom, under section 22 of the Act

Reply to question 12 (a)

65. The Protection of Life During Pregnancy Act 2013 regulates access to lawful termination of pregnancy in accordance with the X case[4] and the judgment of the European Court of Human Rights in the A, B and C v Ireland case. Its purpose is to confer procedural rights on a woman who believes she has a life-threatening condition, so that she can have certainty as to whether she requires this treatment or not.

66. The Act upholds the right to life of the unborn where practicable, and the right to life of a pregnant woman whose life is threatened by her pregnancy, as required by Article 40.3.3. The Act also creates procedures which apply to the lawful termination of pregnancy. The objectives of these procedures are, firstly, to ensure that, where lawful termination of pregnancy is under consideration, the right to life of both the unborn and the mother are respected and afforded protection, in accordance with constitutional requirements, and secondly to ensure that a woman can ascertain by means of a clear process whether she is entitled to medical treatment to which the Act applies.

Reply to question 12 (b)

67. A Guidance Document to assist health professionals in the implementation of the Act is being prepared and is due to be finalised early in 2014. The Guidance will include identifying referral pathways to fulfil the requirement of the Act and other relevant operational matters.

68. The relevant professional bodies continue to be responsible for issuing clinical guidelines to their members in relation to medical conditions that might be relevant to the Act.

69. In addition, the Health Service Executive's National Clinical Care Programme in Obstetrics and Gynaecology was established two years ago, with the overall aim of improving choices in women's healthcare. A key area of work for the Programme is the development and implementation of national clinical guidelines, with the aim of ensuring consistency in clinical practice nationally.

Reply to question 12 (c)

70. There are currently no proposals to amend Article 40.3.3 of the Constitution.

71. The Health Service Executive, through its Crisis Pregnancy Programme, supports the provision of counselling services, medical services and such other health services for the purpose of providing support during and after any type of crisis pregnancy. The Programme is due to meet a group representing women who have received a diagnosis of fatal foetal abnormality in relation to relevant crisis pregnancy counselling and post-abortion counselling options currently available and ways to improve the standard of service nationwide.

Reply to question 12 (d)

72. It will be a matter for the Director of Public Prosecutions to decide whether to proceed with a prosecution and this decision will be based on the facts of each case.

73. Penalties may apply to any person in breach of the Act. While it is recognised that the potential criminalisation of a pregnant woman is a very difficult and sensitive matter,

[4] Article 40.3.3 of the Constitution, as interpreted by the Supreme Court in Attorney General v X, provides that it is lawful to terminate a pregnancy in Ireland if it is established as a matter of probability that there is a real and substantial risk to the life, as distinct from the health, of the mother, which can only avoided by a termination of the pregnancy.

this provision reflects the State's constitutional obligation arising from Article 40.3.3. The sentence to be applied in any particular case is a matter for the Court involved.

Right to liberty and security of person, prohibition of torture and cruel, inhuman or degrading treatment or punishment, and treatment of persons deprived of their liberty, and fair trial (arts. 7, 9, 10, 14 and 24)

13. **Please provide updated information on:**

(a) The number of prisoners accommodated in each of the prisons in the State party vis-à-vis the maximum capacity for each prison outlined by the Inspector of Prisons in his report of May 2013;

(b) The number of remaining prisons without in-cell sanitation out of all the prisons in the State party, and the timeframe to abolish the practice of "slopping out";

(c) The mortality rate in prisons and the number of victims (dead and injured) harmed by inter-prisoner violence; and

(d) Timeline for ending the use of St. Patrick's Institution for the detention of minors

Reply to question 13 (a)

74. Table 3, annex A, sets out the prisoner population as on 9 January 2014, with reference to the maximum capacity for each prison outlined by the Inspector of Prisons in his report of May 2013. The total prison population as of that date was 3,971.

Reply to question 13 (b)

75. Table 4, annex A, sets out the number of prisoners without in-cell sanitation as of 1 October 2013.

76. A 40-month capital programme is being implemented to eliminate "slopping out" and to improve prison conditions in the older part of the prison estate. The number of remaining prisons without in-cell sanitation out of all the prisons in the state party includes parts of Mountjoy, Cork Prisons, Limerick and Portlaoise. Work is continuing on the modernisation project at Mountjoy prison. Refurbishment of the Mountjoy B and C wings was completed in 2012. Refurbishment of the A wing commenced in early January 2013 and is substantially completed, with the wing ready for occupancy. Commencement works on D Wing are on track to begin in early 2014. On completion of the refurbishment of D wing, all cells in Mountjoy prison will have in cell sanitation facilities. In relation to Cork Prison, the tender process is now complete and a preferred tenderer has been identified. Construction works began in January 2014. The new prison is due to be finished in 2015. This will end slopping out in Cork Prison and effectively throughout the prison estate.

Reply to question 13 (c)

77. Since 2008, there have been 50 deaths in custody, as per table 5, annex A. Of the 50 deaths since 2008, the cause of death has been determined in 31 cases. Of these, 11 have been determined as death by misadventure, nine as death by suicide and five as natural causes. A jury returned a narrative verdict in four cases and an open verdict in two cases. While inquests are pending in the remaining 19 cases, initial indications suggest that four were suicides.

78. Table 6, annex A, sets out prisoner assaults during the period 2011-2013. Please note that full figures for 2013 are currently being compiled. Please note also that these statistics do not reflect the number of assaults which inflicted harm.

Reply to question 13 (d)

79. The population of the Institution was reduced by 50% in order to facilitate as smooth a transfer as possible of the 17-20 year olds to dedicated Units contained within Wheatfield Place of Detention. This reduction was achieved through a combination of inter-prison transfers, additional numbers of 18-20 year old prisoners being released on the Community Return Scheme and Temporary Releases. As of before Christmas 2013, the Prison Service can confirm that all sentenced 17 year old prisoners have transferred from St. Patrick's to Wheatfield Place of Detention. The remaining prisoners at St Patrick's Institution (other than 17 year old remand prisoners) will finish transferring to Wheatfield Prison by 10 February 2014. The Department of Justice and Equality and the Department of Children and Youth Affairs has established a Joint Working Group to give effect to the smooth transfer of all 17 year olds from the Irish Prison Service to the Irish Youth Justice Service as soon as building works at Oberstown Campus are completed, scheduled for the third quarter of 2014.

80. The over-arching national legislative framework for children detention schools is the Children Act 2001, as amended. The Irish Youth Justice Service, under the aegis of the Minister for Children and Youth Affairs, is responsible for the three Children Detention Schools (CDS) at Oberstown, Lusk, Co. Dublin, which provide detention places to the Courts. The Programme for Government contains a commitment to end the practice of detaining children in adult prison facilities and this will be met when all boys under the age of 18 detained by the courts on criminal charges can be accommodated in an integrated children detention school setting. The practice of detaining 16 year old boys in adult prison facilities has already ended through the provision of some spare capacity in the existing children detention schools and since July 2012, no 16 year old boy has been detained in an adult prison. To enable the transfer of responsibility for 17 year old boys from the Irish Prison Service, building works for the National Children Detention Facility (NCDF) in Oberstown commenced in September 2013. The first new residential units, to be delivered in 4th quarter 2014, will allow for the extension of the child care model of detention to all under 18 year olds remanded or committed by the courts. The project will also deliver associated education, recreation, visiting, medical and other ancillary facilities. It is planned that the project will be fully completed during 2015.

14. Please provide statistical data on the number of complaints of torture and ill-treatment filed against prison officers, the number of investigations instituted, and the number of prosecutions and convictions imposed. Please also clarify what steps have been taken to establish an independent and effective complaints and investigation mechanism to investigate complaints against prison staff, including allegations of ill-treatment, as recommended by the Inspector of Prisons

81. Following a report by the Inspector of Prisons to the Minister for Justice and Equality in March 2012, regarding the introduction of a new complaints model in the Irish Prison Service which meets best practice and our international obligations in this regard, a new complaints model is being introduced in the Irish Prison Service on a phased basis. The model which is being introduced contains four separate categories of complaints and three separate complaints procedures.

82. Category A Complaints are the most serious level of complaints (assault, serious intimidation of prisoners by staff, etc). Investigation of Category A complaints are by external investigator/s on behalf of the Irish Prison Service. A publicly advertised recruitment campaign was carried out by the Irish Prison Service in September 2012 which sought applications from suitably qualified persons with a legal or investigative background. A panel of 22 Independent investigators was established in October 2012. The

Category A Complaints procedure was introduced on 1 November 2012. Table 7, annex A, illustrates the Category A complaints since 1 November 2012.

83. Category B Complaints are mid-range in terms of seriousness (discrimination, verbal abuse of prisoners by staff, inappropriate searches etc) and are investigated by a Chief Officer with recourse to appeal to the prison Governor and a subsequent recourse of appeal to the Director General if a prisoner is unhappy with the outcome of his/her original appeal.

84. Category C Complaints are essentially service complaints where a prisoner is unhappy with the level of service in a particular prison (visits, phone calls, etc.) and are investigated by a Prison Officer with the possibility of appeal to a Chief Officer if the prisoner is unhappy with the outcome or resolution of his/her complaint.

85. Category D Complaints relate to complaints against professionals such as dentists, doctors etc. Such complaints will be referred in the first instance to the prisons' medical officer for possible resolution and, if this is not possible, to the relevant professional body responsible for regulating the professional involved.

86. The full complaints model will be introduced during the lifetime of the Irish Prison Service Three Year Strategic Plan (April 2012 – April 2015). The Inspector of Prisons has oversight of all categories of complaints.

15. Please provide information on the progress achieved in ensuring the separation of sentenced and remand prisoners, and of detained immigrants from criminal prisoners

87. Rule 71 of Statutory Instrument 252 of 2007 places a statutory obligation on the Irish Prison Service to accommodate sentenced and remand prisoners separately "in so far as is practicable". There is no statutory obligation to ensure separate accommodation. Every effort is made to achieve this, subject to the numbers of prisoners detained on any given day and the number of separate cells/accommodation units available to us. The Irish prison system has a dedicated remand prison, Cloverhill Prison, and every effort is made to utilize this facility to its maximum in order to meet the conditions of Rule 71.

88. With respect to non-sentenced immigrant prisoners, every effort is also made to detain as many of these prisoners as possible in the above-mentioned remand prison, and to disperse sentenced non-nationals throughout the prison estate in the normal course.

16. Please clarify the legal provisions providing for the right of criminal suspects to contact counsel before interrogation, as well as during interrogation in police detention facilities. Please also provide information on how individuals held in police custody are informed in a timely and consistent fashion of the consequences of remaining silent

89. Section 5 of the Criminal Justice Act 1984 provides that an arrested person who is detained pursuant to section 4 of that Act must be informed without delay that they have the right to consult a solicitor. The obligation to inform or cause to be informed rests with the member in charge of the Garda station. The member in charge is further obliged, at the request of the detainee, to notify the solicitor of the person's detention and of the station where they are being detained as soon as practicable. Section 5 also applies to the other

Garda detention powers.[5] Section 5 is limited to adults. Part 6 of the Children Act 2001 makes similar provision for child suspects.

90. The right to have a lawyer present during questioning is a key feature of the EU Directive on the Right of Access to a Lawyer Directive of the European Parliament and of the Council on the right of access to a lawyer in criminal proceedings and European arrest warrant proceedings, and on the rights to have a third party informed upon deprivation of liberty and to communicate, while deprived of liberty, with third persons and with consular authorities. The Irish Presidency, on behalf of the EU Council, reached agreement with the European Parliament on a final compromise text of that Directive on 28 May 2013. The Directive is one of a number of legislative measures set out in the EU Roadmap on Procedural Rights which aim to set common minimum standards in the area of procedural rights for suspects across the Union. Ireland did not opt in to the Directive at the outset of negotiations but is considering opting into the measure once it has been adopted. It is expected that the Directive will be in place before the year-end should Ireland opt in. Proposed regulations under the Criminal Justice Act will meet the relevant EU standards in this area.

91. Section 9 of the Criminal Justice Act 2011 requires that the questioning of a detainee must not start until such time as they have had access to legal advice. This requirement is subject to two exceptions: where the detainee waives or is deemed to have waived their right to prior legal advice; or where certain compelling circumstances exist. As was already the law, the detainee has a right to a "consultation in private" whether by telephone or in person. For reasons of security, "consultation in private" includes within sight of, but not within hearing distance of, a member of the Gardaí. The 2011 provisions have yet to be commenced. Their commencement is dependent on the regulations being in place (under section 5B of the 1984 Act inserted by section 9 of the Criminal Justice Act 2011). It is expected that these regulations will be finalised shortly. The new legislation gives statutory backing to current Garda practice in this area.

92. A person must be cautioned in ordinary language as to the possible consequences of his or her failure to answer questions from which inferences can be drawn. At the start of every interview with a suspect in custody, the interviewing Garda is currently required under the Judges' Rules and the Criminal Justice Act 1984 (Electronic Recording of Interviews) Regulations 1997 (S.I. 74 of 1997) to administer the "ordinary caution" by stating, "[y]ou are not obliged to say anything unless you wish to do so, but whatever you say will be taken down in writing and may be given in evidence." This is intended to convey the right of the suspect to exercise his or her right to silence during the interview. If, during the interview, the Gardaí wish to invoke provisions allowing for inferences to be drawn at trial from silence at interview, they must – in advance of questioning – tell the suspect in ordinary language what the consequences of his or her failure or refusal to answer questions might be.

93. An Advisory Committee was set up in July 2010 under the Chairmanship of the Hon. Mr. Justice Esmond Smyth to oversee policy on interviews in Garda custody and to consider any changes in the law or practice as required. The Terms of Reference for the Committee are to keep the adequacy of the law, practice and procedure relating to the interviewing of suspects detained in Garda custody under review, taking into account evolving international best practice, and to advise the Minister and the Garda Commissioner on any changes that may be necessary.

[5] Section 30 of the Offences Against the State Act 1939, section 2 of the Criminal Justice (Drug Trafficking) Act 1996, section 42 of the Criminal Justice Act 1999, section 50 of the Criminal Justice Act 2007 and sections 16 and 17 of the Criminal Procedure Act 2010.

17. **Please provide updated information on measures taken to prohibit all corporal punishment of children in all settings, as well as any public campaigns undertaken to educate parents and the general public about its harmful effects and to promote positive non-violent forms of discipline as an alternative to corporal punishment**

94. Ireland accords a high priority to protecting children in its jurisdiction from violent punishment. Established legislation (i.e., Section 246 of the Children Act 2001) provides clear legal deterrents against assaults, in whatever setting, which cause unnecessary suffering or injury to a child's health or seriously affect his or her wellbeing. Severe sentences have been handed down by the Courts to persons convicted of assaults against children.

95. The ongoing development of a strong child protection framework is reflected in a suite of legislation – enacted or in the course of preparation – in the area. Developments include the holding of a referendum to amend the Constitution in relation to children's rights, legislation covering the reporting of abuse, and the fundamental reform children's services.

96. Regarding the promotion of positive forms of discipline, family support services, including parenting supports, have been provided by the Health Services Executive (HSE) for many years under the Child Care Act 1991. In addition, the Family Support Agency (FSA) has been providing, through its Family Resource Centre Programme, a range of key services to improve the functioning of the family units. This includes information, advice, support as well as education and training opportunities. The reform of children's services has involved the establishment, with effect from 1 January 2014, of a dedicated national statutory body – the Child and Family Agency – which has subsumed the family support functions of the HSE and the FSA. The new Agency's express statutory functions require it to support and encourage the effective functioning of families, including preventative family support services aimed a promoting the welfare of children and services relating to the psychological welfare of children and their families.

97. The matter of legislating for a complete ban on corporal punishment in all settings in Ireland is being kept under review.

98. Ireland's fourth periodic report referred to the longitudinal research being carried-out under "Growing Up in Ireland". In 2009, the study's reported findings included different approaches to discipline by the parents of nine-year-old children. Mothers were asked to describe the frequency with which they used a range of discipline strategies and 57% reported they never used smacking, 32% said that they rarely used it, 11% said that they used it now and again, and almost no mother reported using it regularly or always. Study findings published in September 2013 provided data from primary caregivers of the three-year-old cohort which indicated that, from a list of eight discipline techniques, the one used least was smacking; less than 1% reported using smacking regularly.

18. **Please provide further information on specific and concrete steps taken, beyond official assurances, to ensure that aircrafts used for the purpose of extraordinary rendition, whether they carry prisoners on board or not, do not pass through the territory of the State party. What measures are taken to investigate past allegations concerning the use of the State party's territory for the purpose of extraordinary rendition flights?**

99. Ireland is completely opposed to the practice of extraordinary rendition. This was made clear to the US authorities at the highest level following the emergence of reports of such practices, and has been reiterated on numerous occasions since then. It has also been made clear that no consent would be granted by the Irish authorities for the transit of an aircraft for the purposes of extraordinary rendition under any circumstances.

100. An Garda Síochána has full authority to search civil aircraft in any circumstances where they have reasonable grounds for suspecting that illegal activity is taking place, such as extraordinary rendition, and to carry out any necessary investigations. The Government continues to call on anyone with evidence which suggests that any person has transited an Irish airport as part of an extraordinary rendition operation to make this evidence available to An Garda Síochána, so that an investigation can take place. Where complaints have been made to the Gardaí, investigations have ensued and, where appropriate, files have been submitted to the Director of Public Prosecutions. The outcome of a number of complaints was outlined in Ireland's previous submission under the ICCPR. In all these cases, no further action was found to be warranted, due to a lack of any evidence of any unlawful activity in this jurisdiction. In March 2011, a further submission was made by two individuals to An Garda Síochána in relation to allegations of breaches of Irish and international law related to the transit of US military personnel and CIA-associated aircraft. No evidence to this effect was uncovered by the Gardaí following an investigation of the allegations made in connection with this submission.

19. Please provide detailed information on:

(a) The number of so-called voluntary patients who have been detained under section 23 or section 24 of the Mental Health Act 2001 during the reporting period;

(b) How the State party intends to improve conditions in mental health facilities and compliance by mental health institutions with the statutory Code of Practice on the Use of Physical Restraint in Approved Centres and the Rules Governing the Use of Seclusion; and

(c) The use of Electro Convulsive Therapy (ECT) in relation to both voluntary and involuntary patients who are accommodated in approved centres during the reporting period, and on any steps taken to ensure that ECT remains a treatment of last resort and that consent to ECT treatment is explicitly set out in law

Reply to question 19 (a)

101. The total number of voluntary admissions to approved centres per year, 2008-2012 can be found in table 8, annex A.

Reply to question 19 (b)

102. The Mental Health Act 2001 provides for the use of seclusion and mechanical restraint for the purposes of treatment or to prevent the patient from injuring himself or herself or others. In line with section 69(2) of the 2001 Act, the Mental Health Commission published "Rules Governing the Use of Seclusion and Mechanical Means of Bodily Restraint", which regulate the use of seclusion and mechanical restraint in approved centres. The Commission also published a "Code of Practice on the Use of Physical Restraint in Approved Centres", which contains best practice guidance on the use of physical restraint for persons working in approved centres. Updated versions of both the Rules and Code of Practice came into effect in January 2010 following an independent review of their provisions which was carried out in 2008. The Inspector of Mental Health Services assesses compliance with the Rules and Code of Practice as part of the annual inspection process for approved centres.

103. The provisions of the Rules and Code of Practice make clear the Commission's belief that these are not standard interventions but emergency measures which should be used "in rare and exceptional circumstances and only in the best interests of the patient when he or she poses an immediate threat of serious harm to self or others". Provisions within both documents also encourage approved centres to focus on preventative measures

that eliminate or minimise the use of restrictive interventions. For instance, Rule 10.2 of the Rules states that "Each approved centre must have a written policy in relation to the use of seclusion. The policy must include a section which [...] details how the approved centre is attempting to reduce the use of seclusion, where applicable". A similar provision is contained in the Code.

104. The Mental Health Commission issued an Addendum to the Rules in March 2011. The effect of the addendum is to require that a patient in seclusion must now be observed for the duration of a seclusion episode i.e. directly by a nurse for the first hour of a seclusion episode and thereafter either directly or through the use of CCTV.

105. Seclusion is defined by the Mental Health Commission as "the placing or leaving of a person in any room alone, at any time, day or night, with the exit door locked or fastened or held in such a way as to prevent the person from leaving. The Commission defines physical restraint as "the use of physical force (by one or more persons) for the purpose of preventing the free movement of a resident's body when he or she poses an immediate threat of serious harm to self or others".

106. Approved Centres are required to return data to the Mental Health Commission on the use of ECT, seclusion, mechanical means of bodily restraint and physical restraint under these Codes of Practice. The Commission reports on this data in its annual activity report.

107. In total, 1,683 seclusion episodes were reported in 2011, which, when compared to 2010, show a decrease of 688 in the number of seclusion episodes recorded. The overall use of restrictive practice used in mental health facilities across the country dropped by almost 12% during 2011. In the four year period from 2008 to 2011, the use of seclusion has steadily declined. Seclusion accounted for 35.5% of all restrictive interventions reported to the Commission in 2011. Fewer than half, 41.7%, of approved centres (32/68) indicated that they used seclusion in 2011 and the remainder (36) reported that they did not use seclusion.

Reply to question 19 (c)

108. Current legislation requires that a patient must consent in writing to the administration of ECT. Where a patient is unable or unwilling to give consent, the treatment may be administered if it has been approved by the consultant psychiatrist responsible for the care and treatment of the patient, and also authorised by another consultant psychiatrist. The Mental Health Commission has published rules regarding the administration of ECT and adherence to these rules is monitored on an annual basis by the Inspector of Mental Health Services. A Review of the Mental Health Act 2001 is expected to conclude shortly. The Review is likely to recommend a change in the law in Ireland with regard to the administration of ECT so that where a patient is capable of giving consent but unwilling to do so, ECT cannot be administered to that patient. This change has been a political commitment for some time. It is likely that the Review will also propose further changes to provide greater protection to patients for whom the administration of ECT is being considered.

Elimination of slavery and servitude (arts. 2, 8, and 24)

20. Please provide information on:

(a) Steps taken to establish a systematic data collection procedure concerning victims of trafficking and forced labour as well as a case management system to track the delivery of services to such victims across multiple Government agencies;

(b) The extent of sale or trafficking in persons for any purpose or in any form, including abductions of children, as well as related prosecutions and sentences during the reporting period;

(c) How victims of trafficking who have sought asylum can also benefit from the recovery and reflection period or temporary residence permission;

(d) The availability of timely and adequate access to and provision of legal services for victims of trafficking and forced labour; and

(e) The applicability of anti-trafficking legislation to EU residents or nationals

Reply to question 20 (a)

109. On 1 January 2009, the Anti-Human Trafficking Unit (AHTU) of the Department of Justice and Equality initiated a data collection strategy for the purpose of gathering information on the occurrence of trafficking in human beings in Ireland. Under the strategy, depersonalised information concerning alleged victims of trafficking, is collected in a standardised format from governmental and non-governmental sources and is collated and analysed centrally in the AHTU. This information, which is published on an annual basis, provides up-to-date knowledge on the nature and extent of human trafficking in Ireland and the emergence of any developing trends in this regard.

110. As of January 2014 four annual reports concerning Trafficking in Human Beings in Ireland for the years 2009 to 2012 have been produced. Organisations contributing information to these reports included the Human Trafficking Investigation and Co-ordination Unit, the Irish Naturalisation and Immigration Service (INIS) of the Department of Justice and Equality, several non-governmental organisations including Ruhama, Immigrant Council of Ireland, Migrant Rights Centre Ireland, Stop Sex Trafficking, Cork and Doras Luimní, Limerick, and international organisations such as the International Organisation for Migration. These reports are available online.

Reply to question 20 (b)

111. An overview of human trafficking trends in Ireland, in terms of the demographic characteristics of alleged victims, is provided in table 9, annex A. Please note that as the Criminal Law (Human Trafficking) Act 2008 came into effect on 7 June 2008, there are no recorded figures of human trafficking prior to that date. Between 7 June and 31 December 2008, 36 alleged victims of human trafficking were encountered by An Garda Síochána. No further breakdown of these figures is available. With regard to convictions, please note that those imposed in any calendar year may be the result of prosecutions initiated in previous calendar years.

Reply to question 20 (c)

112. Administrative Immigration Arrangements for the Protection of Victims of Human Trafficking have been in place since June 2008. These are in place pending the enactment of the Immigration, Residence and Protection Bill 2010. These arrangements fulfil the requirements outlined in Article 13 and 14 of the Council of Europe Convention on Action against Trafficking in Human Beings and article 7 of the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children.

113. The administrative arrangements apply where a foreign national is identified as a person suspected of being a victim of human trafficking and the Minister for Justice and Equality is required to consider that person's immigration status in the State. The document sets out the administrative arrangements whereby such a person may be granted a period of recovery and reflection in the State and may also in certain circumstances be granted one or more periods of temporary residence in the State.

114. The position in Ireland is that the Administrative Immigration Arrangements for the Protection of Victims of Human Trafficking apply only to those who would not otherwise have permission to be in the State. It is important to emphasise that an alleged victim of trafficking who applies for asylum under the Refugee Act 2006 has the equivalent residence rights and access to the same support services as a person in a Recovery and Reflection Period under the Administrative Immigration Arrangements.

115. A suspected victim of trafficking who has had their application for asylum rejected will be entitled to temporary residence permission under the Administrative Immigration Arrangements. In such cases suspected victims are notified of the refusal of their asylum claim and notified of their eligibility for a temporary residence permission.

Reply to question 20 (d)

116. The Legal Aid Board (LAB) provides legal assistance and advice to potential and suspected victims referred to them by An Garda Síochána, from the initial point of contact with An Garda Síochána, on the options open to them, e.g.:

- Seeking assistance under the Administrative Immigration Arrangements for the Protection of Victims of Human Trafficking (for Recovery & Reflection Periods and Temporary Residence Permissions);
- Seeking asylum;
- Seeking redress through employment protection legislation;
- Information on regularising their stay in the country;
- On criminal action;
- Compensation – both criminal and civil; and on
- Voluntary return home.

117. These arrangements comply with the provisions in the relevant international instruments. The arrangements facilitate each person in making an informed decision on what is best for them. There is no charge to the victim for this service. There is no waiting list, unless a large number of people are discovered around the same time.

Reply to question 20 (e)

118. The Criminal Law (Human Trafficking) Act 2008, as amended, applies to EU residents or nationals.

Imprisonment for failure to fulfil a contractual obligation (art. 11)

21. Please provide statistics on the number of individuals who were imprisoned for non-payment of court ordered fines or civil debt during the reporting period. Please clarify what steps are being taken to ensure that no one is imprisoned for failure to pay a civil debt or fine that he or she cannot pay

119. Table 11, annex A, contains the details of fines and debtors committals from 2007-2013.

120. On 14 July 2009, Ireland introduced amending legislation, the Enforcement of Court Orders (Amendment) Act 2009, which introduced additional safeguards for debtors summoned before the Courts. It ensures that those who simply cannot pay are not at risk of imprisonment. The 2009 Act amended Sections 6, 8 and 9 of the Enforcement of Court Orders Act 1940 to ensure that the court will not imprison the debtor unless it is satisfied that s/he has the means to pay and is wilfully refusing to pay. The Court must also be satisfied that all other steps possible have been taken to recover the debt. It provides the

Court with the power to postpone the execution of an imprisonment order until such time as it thinks just, and a clear power to vary the terms of the breached instalment order or to refer the parties for mediation. The Court must also inform a debtor of the risk of imprisonment and of his/her entitlement to apply for legal aid.

121. New legislation expected to be enacted in 2014 provides for a new fines recovery regime that will ensure to the greatest extent possible that persons are not committed to prison for an inability to pay fines. The Fines (Payment and Recovery) Bill 2013 provides for an attachment of earnings order in most cases where a fine defaulter is in employment or in receipt of an occupational pension. Provisions also provide for the making of a recovery order (directing a receiver to recover the fine or assets to the value of the fine) or to a community service order as an alternative to imprisonment for defaulting.

22. Refugees and asylum seekers (art. 13)

Please provide information on measures taken to:

(a) Reduce the delay in the processing of asylum claims;

(b) Establish an independent appeals body to review all immigration-related decisions, as recommended by the Committee in its previous concluding observations;

(c) Ensure that asylum-seekers have full access to early and free legal representation, as recommended by the Committee in its previous concluding observations;

(d) Establish an independent complaints or monitoring mechanism available to persons living in Direct Provision centres; and

(e) Review its detention policy with regard to asylum-seekers and give priority to alternative forms of accommodation, as recommended by the Committee in its previous concluding observations

Reply to question 22 (a)

122. The median processing time to a final decision on an asylum application in 2013 was 36 weeks. Some cases can take significantly longer to complete due to, for example, delays arising from medical issues or because of judicial review proceedings. All asylum applications and appeals are processed in accordance with the Refugee Act 1996 and other relevant statutory provisions. High quality and fair decision-making in all cases continues to be a key priority at all stages of the asylum process.

123. Persons who are refused refugee status have the possibility to apply for subsidiary protection status. This is separate to the asylum or refugee status determination process. New Regulations governing the investigation and determination of applications for subsidiary protection in the State were signed into law in 2013. The European Union (Subsidiary Protection) Regulations 2013 came into effect on 14 November 2013.

124. Under the new regulations, responsibility for the processing of applications for subsidiary protection was transferred from the Department of Justice and Equality to the Office of the Refugee Applications Commissioner (ORAC) with appeals dealt with by the Refugee Appeals Tribunal. Both of these offices are statutorily independent in their functions and they have substantial experience in the area of asylum applications investigations and appeals respectively. The aim of the new regulations and the associated processing arrangements is to significantly reduce the number of subsidiary protection applications on hand.

125. Legislative reform in the area of protection remains a key priority. Work on a new Immigration, Residence and Protection Bill is at an advanced stage and is expected to be

enacted this year. The Bill will provide, inter alia, for the introduction of a single application procedure for the investigation of all grounds for protection and any other grounds presented by applicants seeking to remain in the State. This re-organisation of the protection application processing framework should substantially simplify and streamline the existing arrangements by removing the current multi-layered and sequential processes and provide applicants with a final decision on their application in a more straightforward and timely fashion.

Reply to question 22 (b)

126. Work on the details of the Immigration, Residence and Protection Bill 2010 is ongoing at the Department pursuant to curren Government policy which has committed, under the Programme for National Recovery, to introduce comprehensive reforms of the immigration, residency and asylum systems, which will include a statutory appeals system and set out rights and obligations in a transparent way.

Reply to question 22 (c)

127. Free legal assistance is available to all applicants from the outset of their application for asylum and subsidiary protection. All applicants are informed of the availability of legal advice on the day they apply for asylum or subsidiary protection, and of the Refugee Legal Service (RLS). Information on the RLS is also provided when an application for subsidiary protection is made.

128. The RLS is a specialised office established by the Legal Aid Board to provide confidential and independent legal services to persons applying for asylum and subsidiary protection in Ireland. Assistance is available to applicants prior to the submission of their asylum and subsidiary protection questionnaires to the ORAC and prior to attendance at their asylum and subsidiary protection interviews.

Reply to question 22 (d)

129. The Reception and Integration Agency (RIA) of the Department of Justice & Equality is responsible for the operations of the direct provision accommodation system in accordance with Government policy.

130. The issue of an independent complaints mechanism featured greatly in the discussions which led to the revised House Rules and Procedures (which apply in all RIA asylum seeker accommodation centres) which were introduced in 2010. These Rules included a working complaints mechanism for use by asylum seeker residents and staff alike in Direct Provision centres.

131. The Review Group, whose function was to review House Rules and Procedures which had been in place since 2002, had an independent chairman and included representatives from NGOs including the Irish Refugee Council and the Refugee Information Service, the Health Service Executive, the RIA, Centre Management, and An Garda Síochána. This Group met on thirteen occasions and a subgroup also met with residents and local NGOs in four accommodation centres.

132. It was RIA's view that no clear model was cited during these discussions as to what an independent complaints mechanism would look like, or how it could be implemented without undue cost and bureaucracy. The system of direct provision exists within its own circumstances and the RIA is satisfied that the structure of the complaints procedure contained within the revised House Rules is fair and is broadly in line with the guidelines set out by the Office of the Ombudsman for internal complaints systems.

133. As stated in the House Rules, the aim of the RIA complaints procedure is to have issues dealt with quickly and efficiently. The Rules specifically state that "residents should not be afraid to complain when they need to, and that making a complaint will not affect

how other official agencies consider their claims to remain in the state (i.e., on asylum, subsidiary protection or general leave to remain grounds)."

134. The revised Rules were laid out in a new question and answer format and more clearly explained the complaints mechanism for use by residents and staff alike. The thrust of the complaints procedure is that issues which arise are best resolved quickly, locally and informally without the need to proceed formally. In the main, this is how issues are resolved. The Rules also provide for a written complaints procedure to be followed in the event that the matter cannot be resolved informally. It also allows for direct referral to RIA in certain circumstances. It is important to note that if a complaint is made in respect of a decision made by a particular RIA official, the appeal is not dealt with by that official.

135. These revised Rules have been translated into twelve languages and are provided to all asylum seekers on arrival at their accommodation centres. RIA also held information sessions for residents on the new House Rules in 20 centres in 2010 where active participation in the complaints process, where required, was encouraged.

136. The RIA complaints procedures do not cover the asylum process itself in respect of which an independent appeals process already exists. Nor does it cover the issue of transfers within the Direct Provision system. Over and above the House Rules themselves, the interests of asylum seekers are represented through regular "clinics" in centres where residents can speak directly to RIA Headquarters staff without local centre management being present. Further, unannounced inspections take place in centres, by RIA staff and by a contracted independent company, to ensure that centres are adhering to their contractual obligations. Inspections are made three times a year, twice by Department of Justice and Equality staff and once by an independent company. Centre visits are also undertaken in relation to child and family supports which include one-to-one meetings with families. Issues of concern are also brought to the attention of RIA by representatives of statutory or voluntary agencies working with asylum seekers.

Reply to question 22 (e)

137. As indicated previously, there is no policy of systematic detention of asylum seekers in Ireland. The circumstances in which asylum seekers can be detained, other than in relation to criminal matters are set out in Section 9 of the Refugee Act 1996, as amended. Section 9 also makes clear that such provisions do not apply to persons who are under the age of 18 years.

138. Extensive provision is made in Irish law in relation to detained asylum seekers being brought before a judge of the District Court for their detention to be reviewed. Provision is also made for the prioritisation of applications in the case of detained applicants.

139. Irish law also provides that if an unmarried child under the age of 18 years is in the custody of any person who has been detained, an immigration officer or a member of the Garda Síochána must inform the HSE without delay of the detention and of the circumstances relating to the detention.

140. The provisions relating to the treatment of asylum seekers while detained and where they may be detained are set out in the Refugee Act 1996 (Places and Conditions of Detention) Regulations 2000. These Regulations make extensive provision for information to be provided to third parties (e.g., UNHCR, the applicant's solicitor) regarding the detention of an individual. Provision is also made for visits and communications, treatment of the detained individual and prohibition on ill-treatment whilst in detention, the personal rights and dignity of the individual, and the need to have regard for any special needs they may have. Detainees must also be allowed to have reasonable contact with members of their family group, whether other members of the family group are detained or not.

141. The Regulations also provide that an individual shall not be detained for a continuous period longer than 48 hours in a Carda station, or for any more than two consecutive overnight stays.

Right to fair trial and independence of the judiciary (art. 14)

23. **While noting the responses received from the State party to the Committee's previous concluding observations on paragraph 11 under its follow-up procedure, as well as information provided in paragraphs 567 to 578 of the State party report, please provide updated information on:**

(a) Any measures taken to define "terrorist acts" in domestic legislation;

(b) The number of terrorist acts that have been investigated and prosecuted, including information on the length of pre-trial detention and access to a lawyer in practice; and

(c) The need for continuing the operation of Special Criminal Courts and expanding their jurisdiction, the criteria used by the Director of Public Prosecution to determine whether a case is eligible to be heard before the Special Court, and why these criteria have not been published; and

(d) The compatibility with the Covenant of Part 4 of the Criminal Justice (Amendment) Act 2009 which allows, under certain conditions, for a hearing to take ex parte, if the judge considers that there may be a risk of prejudice

Reply to question 23 (a)

142. The Government does not consider it necessary to define terrorist acts in domestic legislation. Enhanced sentences over and above those normally handed down for unlawful acts are already provided for in legislation where those illegal acts are committed for terrorist purposes. The Government believes that this is an appropriate response to acts carried out with terrorist intentions. The main body of counter-terrorism law in Ireland comprises the Offences Against the State Acts 1939-1998 and the Criminal Justice (Terrorist Offences) Act 2005. These are supported by the general criminal law. The Government has approved drafting of the Criminal Justice (Terrorist Offences) (Amendment) Bill on 6 November 2012. The Bill will provide for the transposition of Council Framework Decision 2008/919/JHA, which amends Council Framework Decision 2002/475/JHA on combating terrorism. The Bill, when enacted, will create three new offences: public provocation to commit a terrorist offence, recruitment for terrorism, and training for terrorism. Enactment is expected before summer 2014.

Reply to question 23 (b) – (d)

143. In 2012, the latest year for which figures are available, the number of people arrested for terrorist motivated offences was 442. There were also nine convictions. As of January 2013 there were 62 subversive prisoners in the custody of the State, 14 of whom are awaiting trial.

144. The provision of the Constitution of Ireland on the right to liberty is Article 40.4.1, which provides that "[n]o citizen shall be deprived of his personal liberty save in accordance with law". All persons detained have access to legal advice and may challenge the legality of their detention in the Courts at any time. A comprehensive description of legislation governing the detention of persons in Ireland was provided in Ireland's commentary on article 9 of the Covenant in its fourth periodic report.

145. The Government considers that there remains a substantial threat from terrorist activity, in particular from so-called "dissident" paramilitary groups. In addition, the

activities of organised criminal groups have given rise to concerns about intimidation of jurors. Consequently, the Government is convinced that the integrity of the judicial process requires that, in exceptional cases, some trials should take place in the Special Criminal Court. It is the fervent wish of the Government that the time will come when these provisions will no longer be required; however, the Government must have regard to the reality of the current situation.

146. Ireland is satisfied that the legislative measures in place which give rise to this question are compatible with the Covenant, including articles 9 and 14.

Right to be recognized as a person before the law (art. 16)

24. Please provide detailed information on the steps taken to issue birth certificates to transgendered persons and how transgender organizations have been included in such process, including in relation to the Gender Recognition Bill

147. The Gender Recognition Advisory Group (GRAG) was established in 2010 to advise the Government on the legislation required to give legal recognition to the acquired gender of transgender persons. In July 2011, the Report of the GRAG was published. Since then and building on this Report, the Department of Social Protection has engaged in a significant consultation and research process during the preparation of the legislation. It has sought and considered the views of a range of organisations and individuals who have experience and expertise in this area, including transgender persons and their representative organisations.

148. Following Government approval, the General Scheme of the Gender Recognition Bill was published on 17 July 2013. This legislation will give legal recognition to the acquired gender of transgender persons. Formal legal recognition, through the issuing of a gender recognition certificate by the Department of Social Protection, will mean that the person's acquired gender will be fully recognised by the State for all purposes – including the right to marry or enter a civil partnership in the acquired gender and the right to a new birth certificate. The legislation will allow for applications from people with intersex conditions should they wish to apply.

149. The General Scheme of the Bill, which has been published on the Department's website, was discussed at hearings of the Joint Oireachtas Committee on Education and Social Protection in October 2013. Officials from the Department of Social Protection, representative groups and legal and medical experts participated in the hearings. The Committee's Report was published on 16 January 2014. Following Government consideration of the Report, the General Scheme of the Bill, with any agreed revisions, will be referred to the Office of the Parliamentary Counsel for drafting with a view to the legislation being published later in 2014.

Freedom of religion (art. 18)

25. Taking note of the information provided in paragraph 611 of the State party report, please provide updated information to amend the constitutional provision requiring a religious oath from judges to allow for a choice of a non-religious declaration, as recommended by the Committee in its previous concluding observations (CCPR/C/IRL/CO/3, para. 21)

150. This issue of the judicial oath has been considered in Ireland by an All-Party Oireachtas Committee on the Constitution in its Fourth Report, "The Courts and the Judiciary" (published 1999), and prior to that by the Review Group on the Constitution. The majority view of the Committee was that a judge should have a choice between a

religious and non-religious declaration while the Review Group recommended just one non-secular oath.

151. A constitutional referendum would be required to amend the Constitutional provision in question and this issue has recently been considered by Government. In July 2012, Government approved consideration of an amendment to the constitution so as to provide for an alternative secular judicial declaration upon appointment to the judiciary. Further consideration of this issue will be required.

26. Please provide information on steps being taken to ensure that the right of children of minority religions or non-faith are also recognized in the Education Act 1998, and the number of non-denominational primary schools that have been established during the reporting period. Please also clarify whether there is an accessible and independent complaint handling mechanism to resolve disputes between parents and schools

152. Section 6 (a) of the Education Act 1998 states that one of its objects is to give practical effect to the constitutional rights of all children as they relate to education. In this context, the policy of the Government has been to provide a sufficiently diverse system, catering for pupils of all religions and none.

New primary schools

153. A New Schools Establishment Group was established in 2011 to advise on the patronage of new schools. The Group's criteria place a particular emphasis on parental demand for plurality and diversity of patronage. 20 new primary schools are to be established by 2017. Between the academic years 2007/08 and 2011/12, 46 new primary schools were established, of which 34 were multi-denominational.

Draft General Scheme for an Education (Admissions to Schools) Bill 2013

154. In September 2013, the Minister for Education and Skills published a Draft General Scheme for an Education (Admission to Schools) Bill 2013, as well as Draft Regulations on the Content of Admission Policies and Draft Regulations on Admission Processes, for discussion ahead of enacting legislation. The aim is to improve the admissions process and to ensure that the way schools decide on applications is structured, fair and transparent.

155. From the perspective of the parent, the framework makes clear that, inter alia, the enrolment policy will include a statement setting out the position of the school in relation to its arrangements for upholding the constitutional right of students not to attend religious instruction.

Follow-up to the Forum on Patronage and Pluralism

156. Following on from the Report of the Advisory Group on Patronage and Pluralism in the Primary Sector, a public consultation on inclusivity in primary schools was held in 2013. It is intended that a White Paper will be drafted by the Department of Education and Skills to set out Government policy in this regard.

Complaint handling mechanism

157. The Department's existing procedure for parents who have a complaint against a school is published on its website. The Department has begun work on the development of a Parents' Charter and this will continue in 2014.

Freedom of opinion and expression (art. 19)

27. **Please provide updated information concerning the measures taken or envisaged to remove the offence of blasphemy from article 40.6.1(i) of the Constitution as well as section 36 of the Defamation Act 2009**

158. The Constitution provides at Article 40.6.1(i) that "[t]he publication or utterance of blasphemous, seditious or indecent matter is an offence which shall be punishable in accordance with law." Successive Attorneys General have advised that, unless this provision is amended or removed, the Government must ensure that blasphemy remains a criminal offence, with sanctions laid down by law. The Constitution may only be amended by referendum of the people. There have been two major recent developments in this regard.

159. The Government has already repealed the Defamation Act 1961, which formerly provided for a criminal offence of blasphemy, punishable by up to seven years' penal servitude. Section 36 of the new Defamation Act 2009 maintains a criminal offence of blasphemy, in order to respect the constitutional requirement. However, this new offence is much more limited. The possibility of private prosecution is abolished; the definition of blasphemy is more specific and more limited (requiring proof beyond reasonable doubt of grossly abusive or insulting material intended to cause outrage to a substantial number of adherents of a religion); a new defence is provided (where a reasonable person would find genuine literary, artistic, political, scientific or academic value in the contested material); and imprisonment is removed as a potential penalty. The maximum possible sanction is now a fine of €25,000, considered necessary to respect the constitutional status of the offence. Nevertheless, there has been no public prosecution in Ireland for blasphemy since 1855.

160. The Government committed in its current Programme for Government to consider holding a referendum on Article 40.6.1 (i). In November 2013, the Constitutional Convention completed its review, recommending that the constitutional offence of blasphemy be removed. The Convention's formal report has now been formally laid before the Oireachtas. The Government will give careful consideration to the Convention's recommendations and will provide a formal response within 4 months as to whether they should be given effect.

Rights of persons belonging to minorities (arts. 2, 23, 24, 26 and 27)

28. **Please clarify what concrete steps have been taken to recognize Travellers as an ethnic minority based on the principle of self-identification. Please indicate concrete measures taken to support their nomadic or semi-nomadic way of life**

161. The Department of Justice and Equality is aware of calls on the part of many Travellers, including a number of national Traveller movements, for recognition of Travellers as an ethnic minority, but equally of the fact that this is not a universally shared view. The Department is also aware of calls for the Government to consider granting such status in the context of international conventions to which Ireland is a party. The Minister for Justice and Equality, against that background, has undertaken to give serious consideration to the issue.

162. Travellers have the same civil and political rights as other citizens under the Constitution. Moreover, the key anti-discrimination measures, the Prohibition of Incitement to Hatred Act 1989, the Unfair Dismissals Acts 1977, the Employment Equality Acts, and the Equal Status Acts specifically identify Travellers by name as a group which are protected. The Equality Act 2004, which transposed the EU Racial Equality Directive, applied all the protections of that Directive across all of the nine grounds contained in the

legislation, including the membership of the Traveller community ground. All the protections afforded to ethnic minorities in EU directives apply to Travellers because the Irish legislation giving effect to those EU directives explicitly protects Travellers.

163. The commitment made to give the issue of recognising Travellers as an ethnic minority further consideration led to a conference on the subject of "Ethnicity and Travellers: An Exploration" being convened by the National Traveller Monitoring and Advisory Committee with support from the Department of Justice and Equality in September 2012. That conference provided an opportunity for aspects of the issue of ethnicity to be discussed and built on earlier discussions within the framework of National Traveller Monitoring and Advisory Committee on the issue. That Committee brings together the national Traveller organisations as well as senior officials from relevant Government Departments. The report of the conference forms part of the ongoing consideration of this issue.

164. The Department of Justice and Equality has been engaging with other Government Departments on the issue, including by identifying the implications arising from the recognition of Travellers as an ethnic group. Those consultations will ensure that the Department of Justice and Equality has a full analysis of all aspects of granting of ethnic status to Travellers in framing any proposals on the matter.

165. With regard to measures taken to support the nomadic or semi-nomadic way of life of Irish Travellers, the Housing (Traveller Accommodation) Act 1998 specifically requires local authorities to have regard to the provision of transient sites when preparing their Traveller Accommodation Programmes. The 1998 Act was designed to put in place a legislative framework to meet the needs of indigenous Irish Travellers.

166. In accordance with the 1998 Act, statutory responsibility for the assessment of the accommodation needs of Travellers and the preparation, adoption and implementation of multi-annual Traveller accommodation programmes, designed to meet the accommodation needs of Travellers, rests with individual housing authorities. The role of the Department of the Environment, Community and Local Government is to ensure that there is an adequate legislative and financial system in place to assist the authorities in providing such accommodation.

167. The "Memorandum on the Preparation Adoption and Implementation of Local Authority Traveller Accommodation Programmes 2014–2018" is intended to provide housing authorities with advice and guidance on the preparation, adoption and implementation of their next Traveller Accommodation Programmes. Under section 10 of the 1998 Act, housing authorities are required to prepare an accommodation programme for a five-year period beginning on a date specified by the Minister, and thereafter in respect of each succeeding 5 years, or each such shorter period as the Minister may direct. Accordingly, the Minister has directed that the next accommodation programme should be for a period of five years. Each relevant housing authority is therefore required to prepare a new five-year programme for the period 1 January 2014 to 31 December 2018.

168. In a Departmental circular issued to Local Authorities in August 2013 regarding the new Traveller Accommodation Programmes, relevant housing authorities were requested to identify the accommodation needs of Traveller families to be met under the new programmes. This must relate to the existing accommodation needs and needs that will arise during the period of the programmes across a range of accommodation options including standard and group housing, permanent residential sites for caravans, and transient sites provided directly by the housing authority or by approved housing bodies or individuals, with or without the assistance of the housing authority.

169. A transient site is a site used by Travellers other than as their normal place of residence. Guidelines issued by the Department envisage that these sites may range from

sites with basic accommodation services to sites containing permanent structures with access to washing and cleaning facilities. However, such sites would only be used occasionally during each year.

170. The National Traveller Accommodation Consultative Committee (NTACC) was established on a statutory basis under the Housing (Traveller Accommodation) Act 1998. The purpose of the Committee is to advise the Minister in relation to Traveller accommodation issues generally. NTACC decided to focus on areas where Travellers gather, e.g., the Knock Novena. Matters which are being considered include the provision of simple "pull-in, pull-out" areas with basic services rather than large formal transient sites or the possible use of private caravan parks as a transient accommodation option.

171. In the latest statistics available, the Annual Count of Traveller Families 2012 showed an increase of 3.9% in the numbers of Traveller families from 9,535 in 2011 to 9,911 in 2012. There was also an increase in the number of Transient Site Halting Bays for Traveller families from 31 in 2011 to 37 in 2012.

29. Given the lack of information provided in the State party report concerning the situation of Roma communities, please clarify specific measures taken to ensure their full enjoyment of Covenant rights, including their right to political participation and the right to be protected against arbitrary interference with their family life

172. The Roma Community in the Irish State is made up principally of persons of Romanian, Hungarian, Polish and Czech Republic origin, all of whom are EU citizens and, as such, in terms of immigration controls, are covered by the provision of the European Communities (Free Movement of Persons) (No. 2) Regulations 2006. Such persons are not required to register their presence in the State. They have the same rights as any other citizen from their country of origin legally resident in this State.

173. There have regularly been voter registration campaigns in recent years focussing on encouraging immigrants to register to vote and to exercise their franchise. Many of these campaigns have been supported by funding from the Office for the Promotion of Migrant Integration of the Department of Justice and Equality. Electoral Register leaflets are available in 17 different languages since 2013. The language versions include, inter alia, Czech, Hungarian, Romanian, Slovak, and Latvian. All EU citizens may vote at European and local elections. Non-EU citizens may vote at local elections.

174. The Constitution guarantees protection of the rights of the family and acknowledges the inalienable right and duty of parents to provide, according to their means, for the religious and moral, intellectual, physical and social education of their children.

30. Please explain whether the State party is planning to revise its criminal legislation prohibiting hate speech, with a view to rendering more comprehensive and effective the protection of minority groups

175. The Prohibition of Incitement to Hatred Act 1989 defines hatred as "hatred against a group of persons in the State or elsewhere on account of their race, colour, nationality, religion, ethnic or national origins, membership of the travelling community or sexual orientation".

176. The Council of the European Union and the European Commission have been examining member state compliance with Council Framework Decision 2008/913/JHA of 28 November 2008 on combating certain forms and expressions of racism and xenophobia by means of criminal law.

177. The Commission will be engaging further with member states in this regard and we will consider any proposals made by the Commission that would enhance the existing protections in the 1989 legislation.

Annexes

Annex I
Tables

Table 1
Number of complaints received by the Garda Síochána Ombudsman Commission, 2008-2012

	Complaints				
Year	*2008*	*2009*	*2010*	*2011*	*2012*
No. of complaints	2,681	2,097	2,258	2,275	2,089

Table 2
Types of allegations made in complaints received by the Garda Síochána Ombudsman Commission, 2008-2012

	Allegation Types				
Year	*2008*	*2009*	*2010*	*2011*	*2012*
Abuse of Authority	26%	26%	34%	39%	34%
Neglect of Duty	25%	25%	29%	26%	27%
Discourtesy	21%	18%	13%	12%	12%
Non-fatal offences	13%	15%	11%	11%	11%
Other	15%	16%	13%	12%	16%

Table 3
Prisoner population as on 9 January 2014, with reference to the maximum capacity for each prison outlined by the Inspector of Prisons in his report of May 2013

Prison	*Number in custody*	*Bed capacity per IOP*[6]	*% of IOP bed capacity*
Mountjoy (Male)	528	540	98
Mountjoy (Female)	118	105	112
Training Unit	104	96	108
St. Patrick's Institution	69	191	36
Cloverhill	392	414	95
Wheatfield	474	642	74
Midlands	843	777	108
Portlaoise	253	291	87
Cork	218	173	126
Limerick (Male)	214	185	116
Limerick (Female)	29	24	121
Castlerea	356	300	119

[6] IOP – Inspector of Prisons.

Prison	*Number in custody*	*Bed capacity per IOP*[a]	*% of IOP bed capacity*
Arbour Hill	143	131	109
Loughan House	124	140	89
Shelton Abbey	106	115	92

Table 4
Number of prisoners without in-cell sanitation as of 1 October 2013

Cork	*204*
Mountjoy	182
Portlaoise	62
Limerick	56
Total	540

Table 5
Number of deaths in custody, 2008-2013

2008	*11 cases*
2009	10 cases
2010	11 cases
2011	6 cases
2012	5 cases
2013	7 cases

Table 6
Prisoner assaults, 2011-2013

No. of prisoner on prisoner assaults (Jan.-Mar. 2013)	*168*
No. of prisoner on staff assaults (Jan.-Mar. 2013)	46
No. of prisoner on prisoner assaults 2012	715
No. of prisoner on staff assaults 2012	107
No. of prisoner on prisoner assaults 2011	1115
No. of prisoner on staff assaults 2011	141

Table 7
Category A complaints investigated by external investigator/s on behalf of the Irish Prison Service

No. of Category A complains received	*79*
No. of Category A complaints upheld	4
No. of Category A complaints not upheld and not appealed	43
No. of Category A complaints currently under investigation	27
No. of Category A complaints currently on appeal	4
No. of Category A complaints appealed and not upheld	1
No. of Category A complaints appealed and upheld	0

Table 8
Voluntary admissions to approved centres per year under sections 23 and 24 of the Mental Health Act 2001, 2008-2012

Year	*Voluntary Admissions*
2008	18,748
2009	18,171
2010	17,667
2011	16,935
2012	16,032

Table 9
Overview of human trafficking statistics, 2009-2012

Year	*Number of alleged victims*	*Number of Investigations*	*Number of Convictions*
2009	66	68	2
2010	78	69	3
2011	57	53	4
2012	48	37	6

Table 10
Details of the convictions recorded for the period 2009 to 2012 for human trafficking

Year	*Act*	*Accused*	*Charges*	*Sentence*
2009	Child Trafficking and Pornography Act 1998 Common law offences	Adult male	Possession of Child Pornography. Soliciting another to commit an offence contrary to Section 3 of the Child Trafficking Act 1998 (Child Trafficking and taking etc. child for sexual exploitation)	6 years imprisonment.
2009/10	Child Trafficking and Pornography Act 1998	Adult male	Incitement to traffic a minor for sexual exploitation and incitement to the possession of child pornography	6 years imprisonment and Post Release Supervision Order for 20 years.
2010	Criminal Law (Human Trafficking) Act 2008	Adult male	Recruitment and trafficking of a minor	3 years imprisonment (suspended). Placed on the Sex Offenders Register for 5 years and entered into a bond to be of good behaviour for a period of 3 years.
2010	Child Trafficking and Pornography Act 1998	Adult male	Sexual exploitation of a child	Eight month imprisonment (suspended).

Year	*Act*	*Accused*	*Charges*	*Sentence*
2010	Child Trafficking and Pornography Act 1998 Criminal Law (Rape) (Amendment) Act 1990	Adult male	Recruitment and trafficking of a minor for sexual exploitation and production of child pornography	10 years imprisonment. Placed on Sex Offenders Register for life. Post Release Supervision Order for 15 years.
2011	Criminal Law (Human Trafficking) Act 2008	Adult male	Recruitment and trafficking of a minor for sexual exploitation	3 years imprisonment
2011	Child Trafficking and Pornography Act 1998[7]	Adult female	Controlling and sexually exploiting a minor for the purposes of prostitution	4 years imprisonment (final two years suspended).
2011	Child Trafficking & Pornography Act 1998	Adult male	Controlling and sexually exploiting of a minor for the purposes of creating child pornography	Fine of €100.
2011	Criminal Law (Sexual Offences) Act 1993	Adult male	Controlling/organising prostitution (female adult victim)	2½ years imprisonment (final fifteen months suspended).
2012	Criminal Law (Rape) (Amendment) Act 1990 Child Trafficking and Pornography Act 1998	Adult female	Sexual assault and sexual exploitation of a minor as well as child pornography	3 years imprisonment
2012	Criminal Law (Human Trafficking) Act 2008 Non Fatal Offences against Persons Act 1997 Common law offences	Adult male	Restrict the freedom of a female minor for sexual exploitation, assault and the attempted false imprisonment of a minor	12 years imprisonment

[7] As amended by Section 6 of the Criminal Law (Sexual Offences) Amendment Act 2007 as substituted by Section 3(2) of the Criminal Law (Human Trafficking) Act 2008.

Year	*Act*	*Accused*	*Charges*	*Sentence*
2012	Criminal Law (Human Trafficking) Act 2008 Criminal Law (Sexual Offences) Act 1993	Adult male	Sexual exploitation of a minor	4 years imprisonment
2012	Criminal Law (Human Trafficking) Act 2008	Adult male	Sexual exploitation of a minor	4 years imprisonment to run concurrently on each of the two charges of child pornography. Sentencing outstanding on 2 other charges including 2 under the 2008 Act.
2012	Child Trafficking and Pornography Act 1998	Adult male	Possession of child pornography	2 ½ years imprisonment.
2012	Illegal Immigrants (Trafficking) Act, 2000 Criminal Law (Sexual Offences) Act 1993	Adult Female	Smuggling of a female minor illegal immigrant and controlling/directing prostitution	3 years imprisonment

Table 11
Details of fines and debtors committals from 2007-2013

Year	*Fines Committals*	*Debtors Committals*
2007	1,335	201
2008	2,520	255
2009	4,806	162
2010	6,683	5
2011	7,514	35
2012	8,304	22
2013	8,196	21

Annex II
Examples of category of complaints to the Garda Síochána Ombudsman Commission

Abuse of authority:

(a) Unauthorised entry to premises, *e.g.*, entering a premises without the owner's permission and without a warrant;

(b) Unlawful arrest, *e.g.*, person arrested without a warrant;

(c) Excessive Force, *e.g.*, handcuffs purposely put on too tight;

(d) Unlawful/unnecessary search, *e.g.*, no grounds/justification for search/strip search;

(e) Threats, *e.g.*, verbal threats but not threats of assault;

(f) Unlawful detention, *e.g.*, not allowed to leave a vehicle (any vehicle) or premises;

(g) Harassment, *e.g.*, all forms of harassment such as continuous road traffic stops, stop and searched and/or surveillance.

Neglect of duty:

(a) Failure to comply with a court order;

(b) Failure to comply with the Garda Code;

(c) Failure to comply with a Garda HQ Directive;

(d) Failure to comply with the Garda Code of Ethics;

(e) Failure to adequately investigate alleged criminal behaviour;

(f) Lack of response (or no response or action taken), *e.g.*, not returning phone calls, letters or emails;

(g) Negligent actions, *e.g.*, failure to return property, *e.g.*, when a house is raided and a mobile phone is not returned.

Discourtesy:

(a) Discourteous language;

(b) Discourteous behaviour;

(c) Discriminatory language/behaviour, *e.g.*, calling someone a name that would be considered as discriminatory. (This is different from discrimination as this is not in relation to a person's motivation for certain actions or non actions.)

Non-fatal offences:

(a) Section 2 Assault: minor assault (minor injuries or no injuries);

(b) Section 3 Assault: serious assault causing harm;

(c) Section 4 Assault: intentionally assaulting someone causing serious harm.[8]

---

[8] Serious harm is defined as injury that creates a substantial risk of death/serious disfigurement/substantial loss or impairment of all or some of the body including organs.